MALAYSIAN REPORTS

Pemungut Hasil Tanah, Seberang Perai Utara, Butterworth v Bertam Consolidated Rubber Co Ltd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 427 OF 1988
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND GUNN CHIT TUAN SCJJ
30 DECEMBER 1989

Land Law — Land acquisition — Acquisition of part of estate for purpose of constructing a public road — Compensation for land — Method of valuation — Applicability of provision against fragmentation — Rate of interest — Claim for surveyor's fees — Costs — Undertaking to prevent flooding on rest of estate — National Land Code 1965, s 214A — Land Acquisition Act 1960, ss 14(5), 48, 51(b), (c) & First Schedule

In this case, the state government of Penang issued a declaration of intended acquisition of about 32 acres of the Bertam Estate, a rubber and oil palm estate of more than 5,000 acres in area, for the purpose of constructing a public road through the estate. An inquiry was held under the Land Acquisition Act 1960 and the Collector on 17 December 1981 made an award.

On 25 February 1982, the respondents applied to the Collector to refer the award to the High Court on the ground that the compensation awarded was 'manifestly lower than the market value' at the relevant date of acquisition. In the event, the learned judge:

(a) increased the award of compensation for the land by 20% from $322,272.00 to $383,503.96;
(b) increased the rate of interest to 8% pa on the sum of $61,231.96 (being the difference of the Collector's award and the court award) from 21 February 1980 (date of possession) to date of payment; and
(c) awarded compensation for

(i)	loss of crops for new drains, pond and alternative road	— nil
(ii)	cost of new drains	— $ 27,200
(iii)	fencing of manager's bungalow	— 4,700
(iv)	cost of fencing for rest of estate	— 13,728
(v)	cost of alternative road	— nil
(vi)	claim for reimbursement of insurance premia	— nil
(vii)	reimbursement of all fees paid by the respondents to its valuers and engineer subject to verification	
(viii)	costs of the proceedings to be paid by the appellant	

[See [1989] 2 MLJ 178.] On a further hearing on 22 and 25 August 1988 and 9 December 1988, the court ordered:

'That in default of a legally enforceable undertaking in writing by the state government of Penang in terms to be approved by this court that it will be responsible for the maintenance of the branch drains concerned, there shall be in favour of the objectors and their successors in title a declaration that they be entitled to reimbursement of all expenses reasonably incurred and properly substantiated for the maintenance (including dredging) of the branch drains concerned so as to ensure a smooth flow of water and waste in the main drains and thus preventing any flooding and damage to crops on the remaining unacquired lands of Bertam Estate, such expenses to be recoverable as a debt due and payable, with liberty to the parties and the successors in title of the objectors to apply to court in the event of any dispute in regard to claims for such expenses and this court doth lastly order that in the event of the said undertaking being given during the pendency of the appeal from this judgment then the award of $27,200 for the cost of new drains shall be rescinded.'

The Collector now appeals against the award of: (a) $27,200 for drains; (b) interest at 8%; (c) reimbursement of fees for surveyors and engineer; (d) costs; (e) the declaration for reimbursement in the event of flooding. The respondents cross-appeal against: (a) the compensation awarded on the ground that it is lower than the fair market value; and (b) failure to award compensation for loss of crops to make way for new drains under head of severance and injurious affection.

Held, allowing the Collector's appeal:

(1) The learned judge was right in holding that the government valuer's method of assessing fair market value using the average value as the base figure and then increasing it for development potential is the correct and equitable method of valuation.

(2) The question of the applicability of s 214A of the National Land Code 1965 (provision against fragmentation) was raised but as this issue had already been settled by the Federal Court in *Bertam Consolidated Rubber Co Ltd* v *CLR Butterworth*,[2] this part of the appeal should be dismissed.

(3) The rate of interest at 8% pa was increased from 6% pa by the Land Acquisition (Amendment) Act 1984 which came into force on 20 January 1984. The respondent is entitled to the higher rate of interest as from the date of the new rate coming into force even though the land was acquired prior to the new rate but the new rate does not apply to the period before the new rate came into force. The appeal as regards interest should therefore be allowed and the new rate should be effective from 20 January 1984.

(4) The order of reimbursement of surveyor's fees made by the learned judge could not be justified in view of the decision of the Supreme Court in *Harrison & Crossfields (M) Sdn Bhd* v *PHT, Wilayah Persekutuan*[5] and this part of the appeal should be allowed.

(5) As the difference between the respondent's claim and the amount of the court award in this case was 56.3% which exceeds the limit of 20% prescribed by s 51(1)(c) of the Land Acquisition Act 1960, the respondents are not entitled to costs and this part of the appeal should be allowed.

(6) What the declaration sought seeks to do is the maintenance of drains which is already the responsibility of the government. There is therefore sufficient infrastructure and co-ordination to meet the objects of the declaration and as such the declaration is superfluous at best. The declaration made by the learned judge would be set aside and the appeal against the award for drains is allowed.

[Kerajaan Pulau Pinang telah mengeluarkan perisytiharan hendak mengambil tanah seluas 32 ekar dari Bertam Estate, sebuah ladang getah dan kelapa sawit, luasnya lebih 5,000 ekar, untuk membina jalan raya melalui ladang itu. Suatu penyiasatan telah diadakan di bawah Akta Pengambilan Tanah 1960 dan Pemungut Hasil Tanah telah membuat award pada 17 Disember 1981.

Pada 25 February 1982, responden telah memohon agar Pemungut merujukkan award itu kepada Mahkamah Tinggi atas alasan gantirugi yang diberi 'jelas lebih rendah dari nilai pasaran' pada tarikh pengambilan tanah itu. Akhirnya, hakim yang arif:

(a) menambahkan award gantirugi bagi tanah itu dengan kadar 20% dari $322,272.00 kepada $383,503.96;
(b) kadar bunga telah dinaikkan kepada 8% atas jumlah $61,231 (iaitu perbezaan antara award Pemungut dan award mahkamah) dari 21 February 1980 (tarikh pengambilan) hingga tarikh pembayaran;
(c) gantirugi untuk

(i)	kehilangan tanaman disebabkan longkang baru, kolam dan jalan lain	tidak ada
(ii)	harga longkang baru	$ 27,200
(iii)	pagar untuk bungalow pengurus	4,700
(iv)	harga pagar untuk baki ladang	13,728
(v)	harga jalan lain	tidak ada
(vi)	pembayaran kembali bayaran premium insuran	tidak ada
(vii)	pembayaran kembali bayaran yang dibayar oleh responden kepada penilai dan engineer tertakluk kepada pengesahan	
(viii)	belanja prosiding dibayar oleh perayu	

[Sila lihat [1989] 2 MLJ 178.]

Di perbicaraan lanjutan pada 22 dan 25 Ogos 1988 dan 9 Disember 1988, mahkamah memerintahkan:

'Jika kerajaan Pulau Pinang tidak memberi akujanji yang boleh dikuatkuasakan di sisi undang-undang mengikut syarat yang disahkan oleh mahkamah bahawa ia akan bertanggungjawab menjaga longkang-longkang cabang berkenaan, hendaklah diadakan bagi pihak pembangkang dan penggantinya deklarasi bahawa mereka berhak mendapat balik semua belanja yang dikenakan dan telah dibukti secukupnya bagi penjagaan (termasuk mengorek) longkang-longkang cabang yang berkenaan supaya memastikan pengaliran air dan kotoran yang licin di longkang besar dan dengan itu mengelakkan banjir dan kerosakan kepada tanaman di baki tanah Bertam Estate yang tidak diambil oleh kerajaan, perbelanjan itu didapatbalik seperti hutang yang kena dibayar, dengan kebebasan diberi untuk memohon ke mahkamah jika terjadi apa-apa perselisihan mengenai tuntutan perbelanjaan dan mahkamah juga akhirnya memutuskan jika akujanji itu diberi dalam masa rayuan ini belum didengar, award $27,200 bagi belanja longkang baru dibatalkan.'

Pemungut hasil tanah, dalam rayuan ini, menentang award yang telah ditetapkan, iaitu: (a) $27,200 bagi longkang; (b) bunga dengan kadar 8%; (c) pembayaran balik fee juru ukur dan jurutera; (d) kos; (e) deklarasi untuk bayaran apabila terjadi banjir.

Responden telah merayu balas terhadap: (a) gantirugi bagi tanah atas alasan ia lebih rendah dari nilai pasaran yang adil; (b) tidak diberi gantirugi bagi kehilangan tanaman untuk mengadakan longkang-longkang baru atas tajuk pemisahan dan gangguan mudharat.

Diputuskan, membenarkan rayuan Pemungut:

(1) Hakim yang arif telah membuat keputusan yang betul, bahawa cara mentaksirkan nilai pasaran yang adil yang diikuti oleh pentaksir kerajaan yang menggunakan nilai purata sebagai angka dasar dan menambahnya untuk potensi pembangunan adalah cara penilaian yang betul dan adil.

(2) Soal kesesuaian s 214A Kanun Tanah Negara 1965 (peruntukan terhadap pemecahan tanah) telah ditimbulkan, tetapi kerana isu itu telah dijelaskan oleh mahkamah persekutuan dalam kes *Bertam Consolidated Rubber Co Ltd* lwn *CLR Butterworth*,[2] bahagian rayuan ini hendaklah ditolak.

(3) Kadar bunga 8% setahun telah dinaikkan dari kadar 6% setahun oleh Akta Pengambilan Tanah (Pindaan) 1984 yang berkuatkuasa dari 20 Januari 1984. Responden berhak mendapat kadar bunga yang lebih tinggi itu, dari tarikh kadar baru itu berkuatkuasa, sungguhpun tanah itu telah diambil sebelum kenaikkan kadar bunga. Akan tetapi kadar baru itu tidak boleh dikenakan semasa kadar baru itu belum berkuatkuasa. Oleh kerana itu rayuan mengenai kadar bunga dibenarkan dan kadar baru dikenakan dari 20 Januari 1984.

(4) Perintah pembayaran kembali bayaran juru ukur yang dibuat oleh hakim yang arif tidak boleh dipertahankan memandangkan keputusan Mahkamah Agung di dalam kes *Harrison & Crossfields (M) Sdn Bhd* lwn *PHT, Wilayah Persekutuan*[5] dan bahagian rayuan ini hendaklah dibenarkan.

(5) Oleh kerana perbezaan antara tuntutan responden dan jumlah award mahkamah di dalam kes ini ialah 56.3% yang melebihi had 20% yang diperuntukkan oleh s 51(1)(c) Akta Pengambilan Tanah 1960, responden tidak berhak mendapat kos dan bahagian rayuan ini hendaklah dibenarkan.

(6) Tujuan deklarasi yang dipohon ialah penjagaan longkang-longkang yang telahpun menjadi tanggungan kerajaan. Oleh kerana itu infrastruktur dan penyelerasan yang mencukupi sudah pun ada untuk mencapai tujuan deklarasi itu. Lantaran itu, deklarasi itu adalah lebih daripada apa yang diperlukan. Deklarasi yang dibuat oleh hakim yang arif hendaklah diketepikan dan rayuan mengenai award bagi longkang dibenarkan.]

Cases referred to

1 *Ng Tiou Hong* v *CLR, Gombak* [1984] 2 MLJ 35 (refd)
2 *Bertam Consolidated Rubber Co Ltd* v *CLR, Butterworth* [1984] 1 MLJ 164 (folld)
3 *Municipal Council of Sydney* v *Troy* AIR 1928 PC 128 (folld)
4 *Consolidated Plantations Bhd* v *PHT, Kelang* [1984] 1 MLJ 273 (refd)
5 *Harrisons & Crosfields (M) Sdn Bhd* v *PHT, Wilayah Persekutuan* [1988] 2 MLJ 299 (folld)

Legislation referred to

Land Acquisition Act 1960 ss 14(5), 48, 51(1), First Schedule
National Land Code 1965 s 214A

Appeal from: Land Acquisition Reference No 15-9-82 (High Court, Penang)

Datuk Mohd Sa'ari bin Yusoff (Senior Federal Counsel) (*Hashim bin Dato Hj Yusoff* (Legal Adviser) with him) for the appellants.

NG Sivanandan for the respondents.

Cur Adv Vult

Harun Hashim SCJ (delivering the judgment of the court): Bertam Estate is a rubber and oil palm estate of more than 5,000 acres in area. On 3 September 1979, the state government of Pulau Pinang issued a declaration of intended acquisition of about 32 acres of the estate for the purpose of constructing a public road through the estate.

The effect of the intended acquisition was in fact to convert an existing private laterite road in the estate to a public metalled road.

An inquiry was held on 22 October 1980 under the Land Acquisition Act 1960 and the Collector made an award on 17 December 1981 as follows:

(a)	For the land:	
	(i) @ $15,000 per acre amounting to	$ 120,000
	(ii) @ $9,000 per acre amounting to	72,000
	(iii) @ $8,000 per acre amounting to	130,272
(b)	Interest @ 6% from 21 February 1980 to 17 December 1981	33,838.56
(c)	Compensation for loss of	
	(i) trees affected by pond	810
	(ii) new fence	13,728
	(iii) cost for annual sums	240,345.49
	(iv) replacement of well	15,000
	(v) resiting of pump-house	2,000
	(vi) construction of new tank	12,000
		639,994.05

On 25 February 1982, the respondents applied to the Collector to refer the award to the High Court on the ground that the compensation awarded was 'manifestly lower than the market value' at the relevant date of acquisition. In the event, the learned judge:

(a) increased the award of compensation for the land by 20% from $322,272 to $383,503.96;
(b) increased the rate of interest to 8% pa on the sum of $61,231.96 (being the difference of the Collector's award and the court award) from 21 February 1980 (date of possession) to date of payment; and
(c) awarded compensation for

(i)	loss of crops for new drains, pond and alternative road	— nil
(ii)	cost of new drains	— $ 27,200
(iii)	fencing of manager's bungalow	— 4,700
(iv)	cost of fencing for rest of estate	— 13,728
(v)	cost of alternative road	— nil
(vi)	claim for reimbursement of insurance premia	— nil
(vii)	reimbursement of all fees paid by the respondents to its valuers and engineer subject to verification	
(viii)	costs of the proceedings to be paid by the appellant.	

On a further hearing on 22 and 25 August 1988 and 9 December 1988, the court ordered:

> That in default of a legally enforceable undertaking in writing by the state government of Penang in terms to be approved by this court that it will be responsible for the maintenance of the branch drains concerned, there shall be in favour of the objectors and their successors in title a declaration that they be entitled to reimbursement of all expenses reasonably incurred and properly substantiated for the maintenance (including dredging) of the branch drains concerned so as to ensure a smooth flow of water and waste in the main drains and thus preventing any flooding and damage to crops on the remaining unacquired lands of Bertam Estate, such expenses to be recoverable as a debt due and payable, with liberty to the parties and the successors in title of the objectors to apply to court in the event of any dispute in regard to claims for such expenses and this court doth lastly order that in the event of the said undertaking being given during the pendency of the appeal from this judgment then the award of $27,200 for the cost of new drains shall be rescinded.

The Collector now appeals against the award of: (a) $27,200 for drains; (b) interest at 8%; (c) reimbursement of fees for surveyors and engineer; (d) costs; (e) the declaration for reimbursement in the event of flooding.

The respondents cross-appeal against:

(a) compensation for land on the ground that it is lower than the fair market value; and
(b) award compensation for loss of crops to make way for new drains under the head of severance and injurious affection.

Compensation for land

The land acquired follows the alignment of an existing estate laterite road about 15 ft wide which is widened by the acquisition to 30 ft. Both the government valuer and the respondents' valuer are agreed that for purposes of valuation, the stretch acquired be zoned into belts and values apportioned to each belt to reflect its distance from Kepala Batas town and degree of potentiality but the valuers are disagreed as to the valuation of each belt as follows:

		Government valuer	Respondents' valuer
Zone A	First 80 chains	$15,000 pa	$30,000 pa
Zone B	Next 80 chains	9,000 pa	15,000 pa
Zone C	Remaining 164 chains	8,000 pa	7,500 pa

The Collector accepted the valuation of the government valuer and made his award accordingly. The learned judge increased this item of the award by 20%. The government is not appealing against this increase but the respondents say even this increase does not reflect the fair market value. The respondents' main ground for saying so is based on the sale of two pieces of land, one of which is the respondents' land adjacent to a commercial plot and the purchaser was a subsidiary of the respondent company and the learned judge found that the transaction was not done at arm's length. The other was a small piece of land in Kepala Batas town itself which was purchased by the respondents. The learned judge held that both these sales

were not comparable to the land acquired. We agree. (See *Ng Tiou Hong* v *CLR, Gombak.*[1])

The learned judge also found that there were no comparable sales for the purpose of valuing the acquired land. We agree. The government valuer relied on evidence of awards made and accepted, sufficiently proximate in point of time to the relevant date for purposes of the present valuation. Such a method of valuation is acceptable: *Bertam Consolidated Rubber Co Ltd* v *CLR, Butterworth.*[2] As part of this particular road project, the government at the same time acquired part of Malakoff Estate adjoining Bertam Estate and awarded compensation at $8,000 pa which was accepted. At the same time the government acquired part of Choong Lye Hock Estate adjacent to Malakoff Estate, also for the same project and awarded compensation at $6,500 pa which was also accepted. Part of Bertam Estate itself, being adjacent to Kepala Batas Town and zoned for development, was previously acquired by the government for low-cost housing and community centre and the valuation was $12,000 pa and $20,000 pa respectively. All three estates are subject to s 214A of the National Land Code 1965 (provision against fragmentation). The government valuer conceded that awards made by the Collector and accepted by the land owners are not necessarily conclusive evidence of market value, but they do act as acceptable comparables in the absence of comparable sales. Notwithstanding the encumbrance of s 214A, he was of the opinion that Bertam Estate did possess some development potential by virtue of its proximity to Kepala Batas town. However, being a very large estate and about four miles wide, not every portion will possess greater development potential, particularly parts lying in the interior. Hence, he divided the land acquired into belts and apportioned different values to each. In so doing, he used the base figure of $8,000 pa for zone C; added 10% to that value for zone B at $9,000 pa; and added 80% for the purpose of assessing the value of zone A at $15,000 pa. At the trial, the government valuer conceded that the court in *Bertam Consolidated Rubber Co Ltd* v *CLR, Butterworth*[2] had increased the Collector's award by 20% in respect of the earlier acquisition of part of the same estate as the present and that he had not taken this factor into consideration in the present valuation. It was on this concession that the learned judge increased the present Collector's award by 20%.

The respondents say even this increase is insufficient. They have not, however, shown to this court that the enhanced compensation does not represent a fair market value of the land acquired. On the contrary, in respect of zone C, their claim was only for $7,500 pa but the Collector had awarded $8,000 pa which the learned judge has increased by another 20%. Against this the respondents' valuer states that the average value of rubber land at the material time was $5,500 pa (the government valuer says it was $5,000 pa) and all the land acquired in this instance is rubber land. The respondents' valuer also relied on awards made in respect of other acquisitions ranging from $5,000 pa for large acquisitions to $27,000 pa for an acquisition of land with an area of Oa Or 4p. He also agreed that lands nearer to Kepala Batas town and lands with road frontage have greater potential value. The government valuer has taken all these factors into account, hence his base figure of $5,000 pa was increased to $8,000 pa. The respondents' valuer, however, assessed the value for the rubber estate at $15,000 pa and proceeded to apportion that sum according to the belts. It must be observed, however, that the major portion of the acquired land was assessed at $7,500 pa which is approximately that of the government valuation. No real explanation, however, has been given why rubber land should increase in value from $5,500 pa to $30,000 pa. We are accordingly of the view, as the learned judge was, that the government valuer's method of assessing fair market value using the average value as the base figure and then increasing it for development potential is the correct and equitable method of valuation.

Section 214A National Land Code 1965

The question of the applicability of s 214A of the National Land Code 1965 was raised but this issue has already been settled by the Federal Court in *Bertam Consolidated Rubber Co Ltd* v *CLR, Butterworth.*[2] We would accordingly dismiss this part of the appeal.

Interest

Section 48 provides that in the event the court awards compensation in excess of the award by the Collector, the court may direct the Collector to pay interest on such excess at the rate of 8% pa from the date on which the Collector took possession of the land to the date of payment of such excess. The rate of interest at 8% pa was increased from 6% pa by the Land Acquisition (Amendment) Act 1984 which came into force on 20 January 1984. In the present case, the Collector took possession on 21 February 1980. The appellant says as the Collector took possession of the land before the amendment, the rate should be 6% pa. The learned judge thought otherwise and awarded 8% pa relying on *Municipal Council of Sydney* v *Troy.*[3] In that case, when the appellants acquired the land in June 1924, the rate of interest was 4%. On 17 September 1924, a new rate of interest at 6% was prescribed. On the question of the applicability of the new rate, it was held that the rate of 6% as from that date applied to land acquired either before 17 September or after that date and that no question of retrospective operation arose. In our opinion, what that decision meant was that the respondent had a title to the higher rate of interest as from the date of the new rate coming into force even though the land was acquired prior to the new rate but the new rate does not

apply to the period before the new rate came into force. This is clear from the concluding passage of the Privy Council which said:

> Accordingly, between 6 June and 17 September the rate will remain 4%, and after that it is 6%.

We would accordingly allow the appeal as regards interest and order the new rate to be effective from 20 January 1984.

Surveyor's fees

The learned judge ordered reimbursement of surveyor's and engineer's fees incurred by the respondents in the objection proceedings to the award of the Collector under s 14(5) and on the authority of *Consolidated Plantation Bhd* v *PHT, Kelang*.[4] It is true that an award of surveyor's fee at 1% (amounting to $104,740) was made in that case but as there was no appeal on that part of the award, the Federal Court did not deal with it. The claim for surveyor's fees, however, was dealt with by the Supreme Court in *Harrisons & Crossfields (M) Sdn Bhd* v *PHT, Wilayah Persekutuan*[5] at p 300 where such a claim was dismissed on the ground that there is:

> ... nothing in the provisions of the Land Acquisition Act 1960 and the schedule thereto to justify the making of an award to include the surveyor's fee. *Consolidated Plantation Bhd* v *PHT, Kelang* [1984] 1 MLJ 273 is not an authority for allowing the surveyor's fee as the Federal Court judgment clearly states that it was confined only to the question of adequacy of the award of $231,000 as the cost of turfing as compensation for the loss of water supply to the mill.

We would accordingly allow this part of the appeal.

Costs

On costs, the learned judge said:

> As to the claim for costs, the Act by s 51(1)(b) provides:
>
> 'where the amount of the Court award exceeds the sum awarded by the Collector, the costs shall ordinarily be paid by the Collector, but if the Court is of opinion that the claim of the applicant was so excessive or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made, or that he should pay a part of the Collector's costs, the Court may at its discretion make such order as to costs as it may think fit;'
>
> In the exercise of my discretion I therefore award the objectors the cost of these proceedings.

The appellants say the learned judge should not have awarded costs to the respondents because s 51(1)(c) applies to this case. That subsection reads:

> where the claim of the applicant made pursuant to any notice under section 10 or 11 exceeds by twenty per cent or more the amount of the Court award, he shall not be entitled to his costs.

Here, the difference between the respondents' claim and the amount of the court was 56.3% which exceeds the limit of 20% prescribed by s 51(1)(c). We are of the view that on the facts before the court, s 51(1)(c) applies. The words 'he shall not be entitled to his costs' are clear and unambiguous, and the question of exercise of discretion did not arise. We would accordingly allow this part of the appeal.

The declaration

The court took three days to hear expert evidence on the drainage system. The gist of this evidence was that before the acquisition, the estate maintained the drains on both sides of the estate road which were called branch drains which flowed into main drains maintained by the drainage and irrigation department before flowing into the sea. The object of the system is to prevent flooding in the estate. The dispute before the court turned on whether the drains constructed by the government on both sides of the road are deep enough for flood control. It is said that as damage is likely to be sustained which is not possible to quantify, the learned judge had no alternative but to make the declaration in response to the respondents' claim for:

> A clear and enforceable undertaking in writing by the drainage and irrigation department or the state government of Penang that it will be responsible for the maintenance of the branch drains concerned so as to ensure a smooth flow to the main drains thus preventing any flooding and damage to the crops on the remaining unacquired lands of Bertam Estate.

Paragraph 2 of the First Schedule to the Act provides

> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:
>
> (d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner, or his actual earnings;
>
> (f) where only part of the land is to be acquired, any undertaking by the state authority, or by the government, person or corporation on whose behalf the land is to be acquired, for the construction or erection of roads, drains, walls, fences or other facilities benefitting any part of the land left unacquired, provided that the undertaking is clear and enforceable.

On the evidence, it is clear that if any damage is likely to be sustained, it is going to be flooding of the unacquired lands retained by the respondents which is caused by an inadequacy of the drainage system now in place or if adequate, due to poor (or lack of) maintenance of the drainage system by the government. Such an eventuality is covered by para (2)(d) of the First Schedule. If there is such an eventuality, then the damages must be assessed and quantified here and now. There cannot be an undertaking by the government as set out in the declaration in substitution for compensation under the aforesaid subpara (2)(d). The only form of undertaking that the government could give is under para 2(f) but there was none in this case. In any event, what the declaration seeks to do is

the maintenance of drains which is already the responsibility of the government, viz the branch drains on both sides of the public road and the main drains maintained by the drainage and irrigation department. In addition, Bertam Estate is within the Bertam Drainage Board Area which is a system of drainage to alleviate flooding in the area as the land is flat and also serves as a catchment area. The drainage and irrigation department is responsible to the Board on which sit the respondents. This responsibility also includes the maintenance of main drains in Bertam Estate. We are of the view that there is already sufficient infrastructure and co-ordination to meet the objects of the declaration herein and as such the declaration is superfluous at best. We would accordingly allow this part of the appeal, set aside the declaration and allow the appeal against the award of $27,200 for drains. For the reasons stated, we allow the appeal and set aside the order of the High Court in respect of:

(a) the payment of $27,200 for drains;
(b) the reimbursement of surveyor's and engineer's fees;
(c) costs; and
(d) the declaration.

The rate of interest on the excess is varied to 6% pa from 21 February 1980 to 19 January 1984 and at 8% pa from 20 January 1984 to date of payment. The cross-appeals in respect of (i) compensation for the land; and (ii) compensation for loss of crops are hereby dismissed. The respondents shall pay the costs of this appeal. Deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *Presgrave & Matthews.*

Reported by *Prof Ahmad Ibrahim*

Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application

SUPREME COURT (KUALA LUMPUR) — CIVIL APPLICATION NOS 12 AND 22 OF 1987
ABDUL HAMID LP, LEE HUN HOE CJ (BORNEO) AND GUNN CHIT TUAN SCJ
16 DECEMBER 1989

Civil Procedure— Contempt of court — Statements and speeches criticizing judgment of Supreme Court — Need to protect the dignity and integrity of the Supreme Court and High Court — Balance between right of freedom of speech and need to protect the dignity and integrity of Supreme Court in the interest of maintaining public confidence in the judiciary — Limits of reasonable courtesy and good faith — Local conditions — Courts of Judicature Act 1964, s 13 — Federal Constitution, arts 10 & 126

The Supreme Court on 27 April 1987 heard an appeal and gave judgment in respect of Supreme Court Appeal No 117 of 1986, *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors* v *Poh Swee Siang*.[1] Subsequently, the first and second respondents in the first application made press releases commenting on the judgment of the Supreme Court. Later, at a meeting organized by the Consumers Association, Penang and the Thean Teik Residents Association in Penang, the first, second and third respondents in the second application delivered speeches also criticizing the judgment. The applicants then sought an order to commit the respondent to prison for contempt of the Supreme Court pursuant to the provisions of O 52 of the Rules of the High Court 1980 read with s 13(1) of the Courts of Judicature Act 1964.

Held, finding the first and second respondents in the second application in contempt of court:

(1) In this country, there is a need to protect the dignity and integrity of the Supreme Court as well as of the High Court which is recognized by art 126 of the Federal Constitution and also by s 13 of the Courts of Judicature Act 1964. A balance must be struck between the right of freedom of speech as provided for in art 10 of the Federal Constitution and the need to protect the dignity and integrity of the Supreme Court in the interest of maintaining public confidence in the judiciary.

(2) It is established that whether a criticism of a judgment is within the limits of reasonable courtesy and good faith must depend on the facts of each particular case, and in determining the limit of reasonable courtesy, the court should not lose sight of local conditions.

(3) As the applicants had indicated that they did not intend to pursue the matter against the second respondent in the first application, he was discharged and cautioned to be careful in future not to sign any document in a language he did not understand.

(4) The language used by the first respondent in the first application might have been intemperate but it did not amount to contempt of court. He was also discharged.

(5) The speech of the third respondent in the second application could be interpreted in two ways, one according to the applicants' contention and the other according to the respondent's version. Bearing in mind that contempt proceedings are serious and quasi-criminal in nature, the court was not satisfied that the applicants had proved the case against the third respondent